

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

AMERICAN TRAFFIC SOLUTIONS, INC.	§	No. _____
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
B&W SENSORS LLC,	§	
	§	
Defendant.	§	
	§	

**DECLARATION OF ADAM TUTON IN SUPPORT OF  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

I, Adam Tuton, declare and state as follows:

1. I am competent to testify and this declaration is based on my personal knowledge unless the context indicates otherwise.
2. I am the co-founder of American Traffic Solutions ("ATS"). I previously served as the Chief Operations Officer of ATS, and I currently serve as the Executive Vice President of ATS and the President of ATS's *Public Safety Division*. I graduated from Arizona University in 1986 with a bachelor of arts degree in English. I have 20 years of business management experience and have been involved in the automated traffic and photo enforcement industry since 1992.
3. As an officer of ATS, I am responsible for overseeing the research and development of the company's red light camera, speed detection, and video speed detection ("VSD") systems. I am also responsible for analyzing the market for these technologies and developing their public safety applications. As a result, I have firsthand knowledge of the market for automated traffic enforcement technology.

4. ATS, directly and through its acquired predecessor, Nestor, Inc. has spent approximately 20 years developing automated red light camera and speed enforcement technologies. Since 1992, ATS has developed, made, used, and marketed innovative automated traffic safety camera equipment and services for use by municipalities across the United States. ATS has become an industry leader in the red light and speed safety camera industry.

5. Among others, ATS currently has 26 active contracts with Texas cities and school districts to provide automated traffic safety cameras including: Cedar Hill, TX; Diboll, TX; Frisco, TX; Lufkin, TX; Arlington Independent School District, TX; Denton, Independent School District, TX; Elgin, TX; Bastrop, TX; Amarillo, TX; Balcones Heights, TX; Conroe, TX; Fort Worth, TX; Humble, TX; Hutto, TX; Irving, TX; Jersey Village, TX; Little Elm, TX; Magnolia, TX; South Houston, TX; Splendora, TX; Sugar Land, TX; Willis, TX; Cleveland, TX; Arlington, TX; Burleson, TX; and Watauga, TX. ATS's traffic safety enforcement technologies are valuable as public safety measures to enforce traffic safety laws (including those governing speeding in school zones and stopping at red lights) and to conserve and free up valuable public resources (including police officer staffing) for other purposes.

6. I am familiar with ATS's VSD systems protected by United States Patent No. 8,184,863 ("the '863 patent") and United States Patent No. 8,213,685 ("the '685 patent") (collectively the "patents-in-suit"), and I work regularly with ATS's technical staff in regard to all of ATS's products, including red light cameras, speed detection, and VSD. ATS is the sole owner of all right, title, and interest in the patents-in-suit. ATS also has the sole right to sue for enforcement of those patents.

7. While ATS's patented VSD technology has the potential to provide significant advantages over other speed detection systems, it also must meet ATS's exacting standards for reliability and robustness. In law enforcement, it is crucial that

vehicle speeds obtained by speed measuring devices are accurate and credible. Speed measuring devices typically must undergo certain rigorous testing and certification procedures to ensure their accuracy and compliance to defined specifications. In addition, personnel that operate speed measuring devices are required to receive proper training on the correct operation of the devices.

8. A significant investment of time and resources is necessary to develop and obtain certification of a system incorporating ATS's patented VSD technology robust enough to obtain widespread commercial success and reliable enough to secure law enforcement, judicial and legislative acceptance.

9. I am familiar with Defendant B&W Sensors of St. Louis, MO as well as its VSD technology and marketing efforts. B&W is a relative newcomer to the automated traffic enforcement market, with an unproven track record, and does not appear to have invested the proper resources and engineering in developing and implementing VSD technology. B&W uses its infringing VSD, known as the Multiple Vehicle Speed Tracking System ("MVST"), to target and capture business from multiple, long-term customers, including entities that are ATS customers. For example, B&W's interference has cost ATS the opportunity to install speed camera systems in Memphis, TN, and B&W has directly captured business from long-time ATS customers including St. Ann, MO; Country Club Hills, MO; Sugar Creek, MO; and Moline Acres, MO. In the traffic camera market, customers sign up for multi-year, multi-unit contracts with long-term relationships. The form agreement B&W has been using with its customers appears to have been copied, in many places verbatim, from the form ATS has long used with its red light camera and speed enforcement camera customers.

10. ATS has had commercial success with its AutoPatrol™ Radar speed camera system, which provides significant advantages to ATS customers due to its simplicity and reliability. AutoPatrol™ competes directly with and is a suitable

substitute for VSD technology. B&W uses its infringing MVST product to bid in competition with ATS's AutoPatrol™ speed camera system. For example, ATS and B&W have both responded to a request for proposals from the City of Chicago, Illinois for a five-year contract providing up to 300 speed detection cameras worth millions of dollars. A true and correct copy of a *Chicago Tribune* news article referring to the competing submissions is attached hereto as Exhibit 1. Similarly, ATS and B&W both recently submitted responses to a separate request for proposals from the City of Youngstown, Ohio for installing and monitoring traffic cameras in school zones within the City of Youngstown School District, as shown in a news article from Vindy.com, the website of *The Vindicator* newspaper, a true and correct copy of which is attached hereto as Exhibit 2.

11. Given the long-term nature of automated traffic enforcement contracts, once a competitive bid or contract opportunity is lost, it is virtually impossible for a different competitor to obtain that customer. Each time ATS loses a contract to B&W, ATS loses the ability to capture that customer as a customer later — either for ATS's AutoPatrol™ or VSD system. In those circumstances, ATS also loses the ability to recoup its R&D investment in time, money, and resources in the patented VSD technology.

12. B&W has had a number of high profile instances where it attempted to implement VSD technology without perfecting the products technically or obtaining all of the necessary legal permissions. As one example, B&W shut down significant portions of Interstate-170 in Missouri in order to install its MVST system. Unfortunately, B&W failed to obtain the necessary permits from the Missouri Department of Transportation, which led to an unauthorized highway closure, traffic jam, and public outcry (including by a St. Louis prosecutor and other government officials). This incident was reported by the *St. Louis Dispatch* in articles published on September 24,

2010 and January 8, 2011, true and correct copies of which are attached hereto as Exhibits 3 and 4. Such actions by B&W have resulted in public condemnation of speed camera technology. B&W's rush to market its infringing technology is turning the opinions of the public and potential ATS customers against speed camera technology, including VSD, undermining public confidence in speed camera technology, including VSD, and is spoiling the market for ATS as the legitimate owner of the patented technology.

13. ATS is capable of increasing the availability and supply of its speed camera enforcement systems, as needed, to meet any industry demands should B&W be required to stop offering its infringing MVST product.

14. Individual speed camera enforcement systems are often sold under long-term contracts that cost tens of thousands of dollars per system. Apart from B&W's acts of infringement and unfair competition, ATS would expect to sell hundreds of such systems annually.

15. Attached hereto as Exhibit 5 is a true and complete copy of an article from the *St. Louis Dispatch* published on June 12, 2011 discussing B&W's MVST product and marketing claims B&W has made in connection with the MVST product.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed in Tempe, Arizona on October 15<sup>th</sup>, 2012.



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ADAM TUTON